

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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OTU A. OBOT,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

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**ORDER**  
12-CV-1053-A

This action was referred to Magistrate Judge Leslie G. Foschio for the conduct of pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1). On September 26, 2013, Magistrate Judge Foschio recommended that defendant's motion to dismiss for lack of subject matter jurisdiction (Dkt. No. 2) be granted, and that plaintiff Obot's request to amend his pleading (Dkt. No. 5) be denied as futile.

Plaintiff Obot objected to the Report and Recommendation and also filed an appeal to the Second Circuit Court of Appeals of an Order of the Court adopting the Report and Recommendation entered before plaintiff's objections were docketed and considered by the Court. The Court thereafter entered an indicative ruling pursuant to Fed. R. Civ. P. 62.1 that the Court would consider the late-received objections to the Report and Recommendation if the Court of Appeals were to remand the case. Plaintiff thereafter moved to withdraw his appeal and the motion was granted.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, including the objections of plaintiff Obot, and it is hereby

**ORDERED**, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation (Dkt. No. 10), defendant's motion to dismiss for lack of subject matter jurisdiction (Dkt. No. 2) is granted, and plaintiff's motion seeking leave to file an amended complaint (Dkt. No. 5) is denied as futile. Because subject matter jurisdiction over plaintiff's claims is lacking, the Court has no authority to entertain his claims, and plaintiff's proposed amendments of his pleading raise no claims within the Court's authority.

The Clerk of Court shall close the case.

**IT IS SO ORDERED.**

*Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: February 19, 2015